DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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July 26, 2013

Mr. John Raymond, Director of Community and Economic Development
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Dear Mr. Raymond:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated June 25, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Palm Springs Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on April 9, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on June 25, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on July 8, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Transfers to the City of Palm Springs (City) in the amount of $1,300,162. Our initial review indicated that the amount was transferred from the former Redevelopment Agency (RDA) to the City for accelerated repayment of loans from the Waste Water Treatment Plant Fund and the Sustainability Fund (formerly Recycling Facility Fee Fund). During the Meet and Confer process, Finance identified an additional $2,218,075 in fund transfers from the former RDA to the City. These additional identified transfers are related to the repayment of principal and interest for the loan issued from the City's General Fund for fiscal year 2009-10 ($2,132,492) and the transfer of revenues received from the Prairie Schooner Parcel Lease ($49,833), and Cork and Bottle ($35,750).

  Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former

RDA prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. Based on information and documents provided by the Agency during the Meet and Confer, the transfers were made pursuant to agreements and arrangements between the former RDA and the City. No additional documentation was provided to support the amounts transferred were for costs of goods and services or for enforceable obligations incurred by the City on behalf of the former RDA. Therefore, the transfers were not made pursuant to an enforceable obligation and are not permitted.

The Agency provided documents showing that $1,021,812 of the loan repayments were made from bond proceeds. For DDR purposes, the disallowed transfers of bond proceeds will not affect the amount available for distribution to the affected taxing entities since bond proceeds are legally restricted assets. Therefore, the OFA balances available for distribution to the taxing entities will be increased by $2,496,425 ($1,300,162 + $2,218,075 - $1,021, 812). However, the Agency should recover the bond proceeds from the City. After the Agency has been issued a Finding of Completion by Finance, it will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued.

Additionally, the repayment of the City loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future Recognized Obligation Payment Schedules for repayment. Refer to HSC sections 34191.4 (b) and 34176 (e) (6) (B) for additional guidance.

- Properties transferred to the City including Prairie Schooner Parcel, Foster Leasehold, PSL 315, Plaza Theatre, and parking lots located at Catholic Church, Blue Coyote, Vineyard, Food Court, Henry Frank Arcade, and Convention Center are not exclusively used for governmental purposes. Additionally, the California State Controller's Office ordered the properties held for resale located at Cork and Bottle, Casa del Camino, McKinney Parcel, and Desert Hotel be returned to the Agency in their draft Asset Transfer Review.

  During the Meet and Confer process, the Agency provided additional documents and information related to Foster Leasehold and PSL 315 showing that the City is the lessee under the Master Lease Agreement with the Bureau of Indian Affairs for all of the parcels related to these properties. The parcels are owned by the members of the Agua Caliente Band of Cahuilla Indians, who originally leased the parcels to SENCA Palm Springs through the Bureau of Indian Affairs. In 1984, the City assumed the Master Lease Agreement from SENCA Palm Springs along with the sublease agreements that had been entered into with various parties, including the former RDA. Since the City is the primary lessee, any subleases or sub-subleases that the former RDA was a party to should be amended to remove the former RDA since agreements between the City that created the RDA and the former RDA are no longer enforceable pursuant to HSC section 34171 (d) (2). Therefore, Finance no longer objects to the transfer of Foster Leasehold and PSL 315.

  Additionally, the Agency provided the Supplemental Lease Agreement No. 4 (Lease Agreement) between the City and the City of Palm Springs Financing Authority

(Authority), a joint powers authority created between the former RDA and the City, which includes the Convention Center north parking lot as part of the financing structure for the 2004 Lease Revenue Bonds issued by the Authority. The Official Statement for the 2004 Lease Revenue Bonds states the City is required under the Lease Agreement to make payments in consideration of the use and possession of the convention center and improvements, which includes a parking lot totaling 5.5 acres north of the convention center. However, the former RDA was not a party to the lease agreement and the former RDA and the Authority are two separate legal entities. The Agency did not provide any other information or documentation to demonstrate the transfer of the property is pursuant to an enforceable obligation. Therefore, the transfer continues to be disallowed.

Finance also continues to object to the transfers of the remaining parking lots and the Plaza Theatre for governmental purposes because they are not reserved for the sole use of governmental agencies or persons visiting those agencies. HSC section 34191.3 suspended the Agency's ability to dispose assets for non-governmental purposes until Finance has issued a Finding of Completion and has approved a Long Range Property Management Plan (LRPMP). Since the transfers are for non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities for these items. However, the Agency should reverse the improper transfers, recover the assets, and address the disposition of these properties in its LRPMP.

However, Finance notes that to the extent the City would like to retain these parcels, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA is the retention of property for future development purposes pursuant to an approved LRPMP. If this option is selected, HSC section 34180 (f) (1) states that the city, county, or city and county must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to HSC section 34188, for the value of the property retained.

The Agency's OFA balance available for distribution to the affected taxing entities is $6,623,617 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	4,127,192
Finance Adjustments		
Disallowed transfers:	$	2,496,425
Total OFA available to be distributed:	$	6,623,617

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for

transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

for

STEVE SZALAY
Local Government Consultant

cc: Mr. Geoffrey Kiehl, Director of Finance, City of Palm Springs
Ms. Pam Elias, Chief Accountant, Property Tax Division, County of Riverside Auditor-Controller
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office